NOTES.

SPECIE CONTRACTS.

In section 1 of the act of Congress of February 28, 1878, "to authorize the coinage of the standard silver dollar and to restore its legal tender character" are found the words "which coins . . . . shall be a legal tender at their nominal value for all debts and dues public and private, except where otherwise expressly stipulated in the contract." The *exception* embodies an interesting piece of legal development.

From very early times, the courts of law in cases of breach of contract have given a remedy in the form of money damages, and not in the form of enforced performance of the terms of the agreement, *i. e.*, not its specific performance. As early as the reign of Edward III, however, it was recognized that in many cases this was wholly inadequate, and resulted in a failure of justice, and the Lord Chancellor, who as "keeper of the king's conscience" exercised an extraordinary jurisdiction, granted relief in the form of the specific performance of the terms of the contract. Such remedies were, until very recent times, granted only in cases in which there was no remedy at law and where land was the subject of the contract. Lately, and particularly in the United States, the attitude of the courts has been more liberal, and specific performance has been granted often where services or personal property was the subject, or where there was a remedy at law less effective than the equitable one. Specific performance is a remedy which can be granted only by courts which are given an equitable jurisdiction.

When the act of Congress of February 25, 1862, was passed and the legal tender notes were issued, two questions arose: (1) Had Congress the power to confer this power on bills of credit? (2) Granting that Congress had that power, had it been so exercised that even those contracts expressed in terms of a special kind of money, as "lawful silver money of the United States," "lawful silver money of the United States, each dollar weighing at least seventeen pennyweights and six grains," "dollars in gold," could be satisfied in legal tender notes?

In California and Nevada, where there was a strong feeling against

the introduction of the legal tender notes, legislation was enacted, expressly granting a remedy in the form of specific performance in such contracts, viz., "In an action on a contract or obligation in writing, for the direct payment in money made payable in a specified kind of money or currency, judgment for the plaintiff, whether the same be by default or after verdict, may follow the contract or obligation and be made payable in the kind of money or currency specified therein; and in an action against any person for the recovery of money received by such person in a fiduciary capacity or to the use of another judgment for the plaintiff . . . . may be for the same kind of money or currency so received by such person." (*Session Laws of California*, 1863, chapter XXI, No. 2. This act dates from April 27, 1863. The same act passed the Nevada legislature and became a law January 4, 1864.) This legislation was in both states attacked on the ground of its unconstitutionality, as in conflict with the national act of February 25, 1863. In California the state act was upheld (Carpentier *vs.* Atherton, 25 California 564, July 1864) on the ground that no new right had been granted, but simply a remedy given where none had before existed, and on the ground that such contracts were not included in the act of Congress, since that act had recognized and approved such contracts by requiring import duties to be paid in gold. The Nevada act had a more adventurous history. It was first (Millikan *vs.* Stout, 1 Nevada, 573, 1865) declared void. Three years later, however, the court reconsidered and reversed this decision (Linn *vs.* Minor, 4 Nevada 462, 1868) declaring that that decision had never been observed by the honest and respectable portion of the community. In that year the question came before the United States Supreme Court (Bronson *vs.* Rodes, 7 Wallace 229) and the principle of the California legislation was sustained, when it was decided that contracts for the payment of United States coin could be discharged only in coin for which judgment could be entered. This decision did away with the supposed necessity of such legislation and this was later recognized by the Nevada court when it decided that a contract made payable in "gold coin or its equivalent in United States legal tender notes" could be enforced according to its terms even were there no such legislation. (Wells, Fargo & Co. *vs.* Van Sickle, 6 Nevada 45, 1870.) The doctrine of Bronson *vs.* Rodes has, of course, been accepted by the state courts. This gives the parties to a contract the right to elect between the two kinds of currency which resulted from

the legislation of February 25, 1862, *i. e.*, between paper and coin; the act of 1878 recognizes the same right as to the two kinds of coin, gold and silver.

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THE LATER RAILWAY COMBINATIONS.

The open concentration of railway control in the union of the New York Central, Lake Shore and Boston and Albany in the east, the Union Pacific, and Southern Pacific, and the Northern Pacific, Great Northern and Burlington in the west, and the less apparent but not less effective centralization by common ownership of independent systems, is making a radical change in transportation conditions which a few years ago would not have passed with the slight attention it is now receiving.

The consolidation movement in other industries contains elements of strikingly novel interest, which for the time being have so absorbed attention as to leave the railway combinations comparatively little notice. It is, however, as true now as it ever has been, that railway control and management is of fundamental and paramount importance to our industrial and commercial interests. Present prosperity with its higher prices and wider margin of profits may cause shippers to pay increased freight charges with little grumbling, but will the rates be lowered when less favorable conditions and lower prices compel the shipper to consider expenses more carefully than he is now doing?

In the past competition for a declining volume of traffic has compelled rival railway managers to lower rates during periods of depression, sometimes with disastrous results to the roads. These lower rates forced improvements and economies which enabled the roads to make a profit, even at the reduced rates, and the trend of rates has been steadily downward during the past three decades. Increased price of materials and higher wages are given as the excuse for the advance in rates, which has been made during the past two years. But the surplus of net earnings and the ability to pay dividends on stock which represents no investment of capital, indicates that power which restriction of competition gave, rather than the necessity of meeting higher expenses, led to the advance in rates. It is true that the increase in railway rates has been less than the addition to the price of tin plate, steel rails and other monopolized products, but this merely indicates